



BODIES CORPORATE NEWS

Keeping Trustees Informed

R9.95



MAKING SECTIONAL TITLE WORK

www.propell.co.za

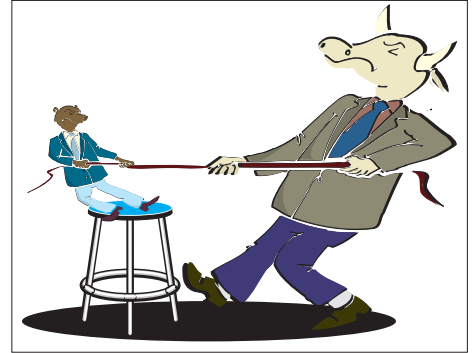
Trustees, don't be **intimidated** by a vocal and threatening **minority** use your **powers** - motivate the **majority**, yet maintain a high level of **transparency**

Majority Rule is the basis upon which discussions are made in the Sectional Title world. Yes, **Democratic principals** apply, yet all too often we learn of schemes who's upliftment is **inhibited** by a **minority** who refuse to support an ordinary resolution adopted by the majority. This often results in a conflict or stalemate: **Transparency is the key to good governance yet the concept can backfire on trustees who try to involve members in a wide range of decisions by seeking approval from a majority of owners for decisions that they technically could have made themselves.**

Most common areas of conflict in this regard are decisions initiated by trustees at trustees meetings which are not unanimous and a general meeting is called to **seek endorsement** from a **majority of owners.**

Disputes usually surround issues such as **maintenance, security, or the appointment** of agents and employees.

When trustees **involve owners** in decisions regarding the appointment of agents or gardeners, quite often a minority of owners **will oppose** these appointments, then make **life unbearable** for trustees and the appointed agents/staff by scrutinising their performance and "nitpicking" at every opportunity. Maintenance issues can become a minefield and result in **stalled activity**, especially when a **special levy** is raised for painting and a **new paint quality** or shade is to be considered because the previous colour is not available in the new product range or is no longer in fashion. Getting everyone to agree on a colour is **almost impossible**, and even when the majority (51%) choose a colour, there is always a vocal minority who will **refuse to pay** towards the special levy as they prefer dark red. This type of scenario occurs frequently, especially in older buildings, with elderly residents, some of whom tend to **oppose maintenance options** which result in the use of more **expensive** yet practical **modern** product concepts. Consider the replacement of rusty iron window frames with aluminum, or upgrading the quality of wall coatings, gutters, paving, gates, etc.



To avoid conflict, yet maintain transparency trustees should make the **basic decision**, then provide motivation for their decision, by **involving members** in the final choice. *Continued on page 2...*

IN THIS EDITION

Ask the Editor
Page 3

Role players
in Sectional Title
Page 4

Editors comment
Page 6

letters received from
readers
Page 7

Tertius advises
Page 8

STOP PRESS URGENT ANNOUNCEMENT **DON'T PANIC!**

The submission of an information manual in terms of the 'Promotion of Access to Information Act' No. 2 of 2000, has been postponed until 2011 for most Body Corporate's. The definition of those that qualify is very wide and clarity is needed.

Visit www.sahrc.org.za for further info.

Bodies Corporate News is provided to empower chairpersons / trustees, by enabling them to maximise the property investment of owners in a complex. Our newsletter needs to reach chairpersons or trustees as we offer them free copies. If you received Bodies Corporate News by chance please pass it on to your Body Corporate.

If you are a chair / trustee and have not yet confirmed your contact details, please do so in order to remain on our mailing-list.



WILCOTE

Waterproofing & Painting

THE PROFESSIONAL SOLUTION

WILCOTE HEAD OFFICE

PO Box 272, Balito, 4420 Tel: 032 942 2033 Tel/Fax: 032 942 2019

Email: wilcote@mweb.co.za Website: www.wilcote.co.za

NORTH WEST
Tel: 018 - 468 1085
Cell: 082 335 1022

WILCOTE NORTH, NORTHWEST
Tel/Fax: 014-596 6291
Cell: 082 784 8142

PRETORIA NORTH
Tel: 012 - 546 9728
Tel/Fax: 012 - 804 3214

JHB WEST
Cell: 083 440 3259
Cell: 082 652 7802

MIDRAND
Tel: 011 - 894 2169
Cell: 082 725 1615

JHB EAST RAND
Tel: 011 - 979 2217
Fax: 011 - 979 2169

JHB NORTH
Tel: 011 - 888 6073
Fax: 011 - 888 7730



Rules keepeth the peace

The various rules that sectional title schemes are subject to include management and conduct rules and apply equally to all owners irrespective of the size of each unit. Trustees are the custodians responsible for their efficient and impartial implementation. In a perfect world the need for rules would be eliminated by plain good manners, but it's remarkable how quickly these disappear when a conflict arises.

The status and content of a body corporate's rules should be beyond doubt and freely available to all owners. There are standard versions, contained in annexure 8 and 9 to the Sectional Title Act, but they may have been amended to suit an individual scheme. Ideally, potential owners should obtain a copy applicable to the scheme in which they desire to invest before actually purchasing.

Badly drafted rules, or those that have not been established according to prescribed procedures, cannot be enforced against errant owners and occupiers. An amended rule may not be unreasonable or in conflict with the provisions of the Act and conduct rules may not be irreconcilable with any

provision of the management rules.

An unlikely, but factual example, would be an attempt to make a rule whereby trustees are authorised to expel the tenants of non-resident unit owners in the case of certain rule infringements. If they have a rule which is utterly beyond their powers it cannot be enforced, and only serves to undermine the authority of the trustees. If rules are seen to be ineffective it does not encourage other owners and occupiers to comply.

A more typical example would be the frequent attempts by trustees to recover penalties or fines from owners in breach of the rules. If the fines are not supported by a well-drafted rule in which the constitutional requirements for a fair administrative hearing have been entrenched and are observed, they will be unsuccessful. What happens when one owner refuses to pay such an illegal fine while others have already paid similar fines in the past?

An attempt to enforce defective rules may easily result in trustees having to walk the walk of shame, after an unsuccessful court action in which the body corporate is ordered to pay the culprit's legal costs, which may have to be funded by raising an additional and unpopular special levy.

But probably the most damaging effect of defective rules is that it undermines the trustees' authority. The standard of management will then inevitably deteriorate, which will eventually have a negative impact upon the market value of units. Such a situation could easily gain momentum and develop into a spiral of decline which, beyond a certain point, may become unstoppable. The end result of such a worst-case scenario would be the total loss of owners' investments in their property.

To ensure sound and fair management, trustees should regard it as their duty to revisit their rules every year and to propose any changes which may be necessary. Rule changes are never easy. Drafting is problematic and should preferably be done by an expert in consultation with the trustees. The trustees should also consider discussing proposed amendments of the rules with members at an information meeting.

Rule changes become especially difficult if conflicts of interest have already appeared. Obtaining the appropriate resolution may then become impossible. Achieving their objectives will then depend upon the diplomacy and negotiating skills of the trustees.

If a rule change is essential, but cannot be achieved due to conflicts of interests, apathy, or absence of voting owners, trustees may consider approaching High Court to sanction a unanimous resolution to amend management rules. The same avenue is not available for an amendment to the conduct rules, which specifically requires only a special resolution. If a special resolution cannot be obtained and it is imperative that amendments to the management rules be made, the trustees, or any owner or owners, may consider the appointment of an administrator by the court for the purpose of adopting new conduct rules. Having managed to get the rules in good order, it is imperative that trustees should not only be familiar with the rules, but that they should strictly adhere to the procedures required by the rules and, importantly, be seen to do so.

Simone Sulcas - Propell

...Continued from Page 1

Take the issue of paint choice for example: Simply send the owners a short letter explaining the benefits of your choice of paint, attach the manufacturers technical brochure and ask members to **choose** between two colours. Only show the samples of the two **colours preferred** by the trustees, and ask members to tick their choice and place it in the Body Corporate's mailbox within 4 days.

Providing a **wide choice** of colours is a recipe for **disaster**. Apply these principals to window frames, gutters, paving, etc, etc. In the case of appointing agents or staff, trustees who prefer transparency can simply interview a range of candidates, **narrow the field** down to two, then attach the applicants credentials, to a short **motivational letter** justifying the need for the appointments and **ask members** to make their choice.

At the end of the day the **majority** has ruled. After all the trustees themselves were **elected** to serve the members by decisions based on majority rule: Trustees could even apply these principals if restrictions are placed on their powers, however owners would need to consent in writing (attach a reply slip). Members **cannot refuse** to pay a special levy raised for urgent **maintenance** work, but trustees can **reduce the risk** of conflicts arising as a result.



NO SCAFFOLDING NEEDED

Skysite is a rope access company using abseiling and rope systems to carry out work in hard to reach areas.

Safety at Skysite

Compliant with the Occupational Health and Safety Act. Skysite is a member of the Rope Access and Fall Arrest Association (RAFAA) ISO 9001/2000 Quality Management approved. All work done to SABS standards. Covered by R10 million public liability insurance.

Services offered

- All exterior building maintenance
- Painting
- De-rusting and painting windows
- Repairing cracks and spalling
- Sealing and waterproofing
- High-pressure cleaning
- Window cleaning

CAPE TOWN OFFICE

Tel: 021 448 3960 Fax: 021 447 1970
Email: simon@skysite.co.za Cell: 082 425 9460



Catalyst Risk Managers

Insurance Brokers

Specialists in body corporate insurance - Let us help you.



CATALYST
RISK MANAGERS

For immediate quotes contact

Paddy Herbert on

021 6575500

or email

paddy@catalyst.co.za

ASK THE EDITOR

Try to
Rob will answer your questions

Many requests for information are received, most are answered when you phone our help-line 086 757 7882. A few are answered within the pages of this magazine.

Q Thank you for a great publication. Your opinion on Trustees that are not owners would be greatly appreciated. We have two trustees that are not owners, they are relatives of owners and are guaranteed a proxy and a nomination every year. I am of the opinion that this is extremely unfair, I have spoken to our Chairman about this and his reply was as follows; Sectional Titles Act says that as long that Owners

or spouses of Owners are in the majority or at least equal to the number of non Owners on the Trustees committee everything is Legal. He does realise, however, that this could be a cause for concern. Your comments please.

J. Descroizilles

A Your Chairman is correct: How did this situation arise? Was it because owners do not want to come forward and stand as potential trustees? If so then only owners can be blamed as a result of their lack of interest and non participation! Why don't you seek a nomination for yourself just prior to your next A.G.M.

Editor

issue addressed for me. To my horror I was then informed by the trustees that I must get it repaired at my own cost, as the exclusive use garden area around the unit is registered to the respective owner and I was therefor responsible for all outside maintenance to my unit. Can this really be true - are there two sets of Sectional Title Rules? I believe that the outside shell is the responsibility of the trustees to maintain including the small leak in the roof - long since repaired. However other owners have also raised the above issue with me, and whenever raised at an AGM or SGM the Chairman reminds everyone that the sections are registered to you and you are responsible for the maintenance. Exclusive use area - namely the gardens I understand and appreciate that I must keep clean by ensuring lawns are cut and flower beds are well maintained but painting and external repairs is under the jurisdiction of the trustees!!

With best wishes, A Trustee

A There is only one set of rules, (unless correctly amended) you own the inside of your section and an undivided share of the common property. Even your exclusive use area is common property (but for your use only) this is a cornerstone of the Sectional Title Concept and I don't believe that it can be amended. The Body Corporate is responsible for your roof, the outer walls, and the foundations.

Imagine if each owner was responsible, one could then assume that every section could be painted a different colour, Wow! Exclusive use areas surrounding a section does not turn the section into a self governing island, nor does an exclusive use area which borders an outer wall of a section, mean that the owner must maintain that particular wall whilst the body corporate paints the other three.

SUBSCRIBE ANNUALLY TO BODIES CORPORATE NEWS

- ADVICE FROM SECTIONAL TITLE EXPERTS
- PRACTICAL AND USEFUL INFORMATION
- COMPETITIONS AND PRIZES

Name(Co or Individual): _____

Address: _____

Code: _____

Tel(H): () _____

Tel(B): () _____

Cell: _____

Email: _____

Status: CHAIR / TRUSTEE OWNER

PLEASE TICK MANAGING AGENT TENANT

Payment Method:

Cheque enclosed

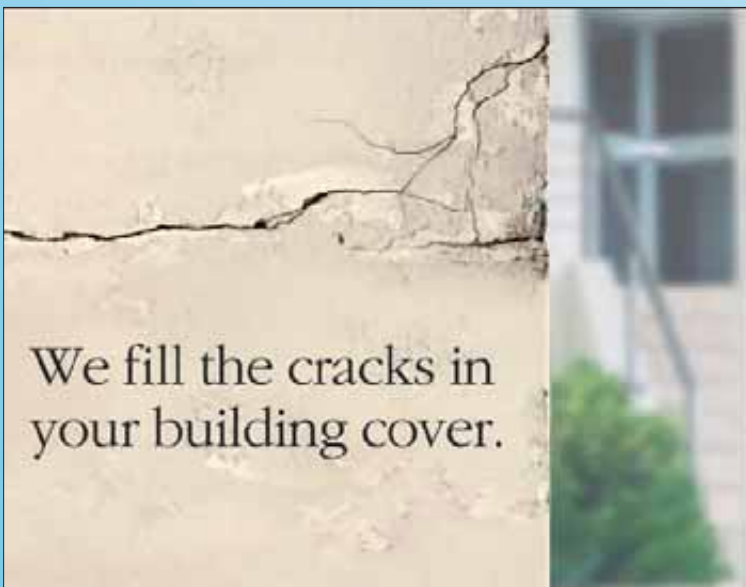
Postal order enclosed

Made in favour of Bodies Corporate News, and posted to PO Box 45002 Claremont 7735

I ENCLOSE MY SUBSCRIPTION OF R80.00, (OR R50.00 AS I AM A TRUSTEE)

Q 1. In 1992 I purchased a brand new Town House in a complex being developed in Bloemfontein - my introduction to living in a secure and cost effective environment. My neighbour and I then decided to have gutters installed plus security gates fitted to the front and rear doors of our units. The day after the commencement of work we both received a letter from the Chairman requesting us to remove immediately the gutters and security gates. We both decided to go and have a face to face discussion with him and then found out that we only owned the inner shell of our unit. We naturally apologised and put a letter in that evening requesting permission to carry out the upgrades which was then granted - a lesson well learned as I am honest I thought I had purchased the unit and ground up to the walling separating the unit from one another.

2. In 2000 I became a pensioner and relocated to Pietermaritzburg and again was fortunate to locate a lovely well maintained unit in a beautiful complex. Whilst waiting for the transfer to go through a leak developed in the roof and I requested the trustees to have the



We fill the cracks in your building cover.

CORPORATE SURE TAILOR MAKES INSURANCE FOR SECTIONAL TITLE PROPERTIES

C-Sure Underwriting Managers (Pty) Ltd is a specialist insurance underwriter providing cover for the specific needs of the Sectional Title and Shareblock property market.

With our extensive experience in the area of building insurance, we have tailor made the best insurance package for Residential and Office Properties.

The Corporate Sure Policy is administered by C-Sure and underwritten by Santam Insurance Limited, a partnership that assures our policyholders the best service and products available.

C-Sure is committed to providing insurance policies that consistently meet the ever-changing needs of the Sectional Title Property market.



For more information contact Bruce and Maureen,
Tel: 051 571 2500, Fax: 051 571 2527/562 8971
email: bgibson@corporate-sure.co.za or call your insurance broker
Corporate Sure: Sectional Title Underwriting Managers for Santam Limited

Innovative Insurance Solutions
for Sectional Title Properties

CORPORATE
Sure

UNDERSTANDING SECTIONAL TITLE WHO CONTROLS, AND WHO ARE THE CENTRAL ROLE PLAYERS

Owners collectively are known as the "Body Corporate" (I prefer the term stakeholders) and are the rulers in a Sectional Title Scheme. A body corporate is a separate legal body and can sue or be sued in its own right. Owners can be compared with shareholders in a business environment. When owners act in unison they have almost unlimited power. The Body Corporate i.e. all owners collectively are governed by the Sectional Title Act and are obliged to perform a host of functions,



and are also given wide ranging powers. They need to make sure that their complex is run efficiently and operates in accordance with the prescribed legislation. Shareholders \ investors in the business world must also ensure that their investments are well managed and profitable. Property values are maximised when a body corporate is run efficiently. Shareholders in business need to ensure that their investment provides maximum returns. In business shareholders acting in unison have the power to hire and fire the Board of Directors. Just as the Body

Corporate has the power (when they act in unison) to appoint and dismiss trustees. Trustees are appointed by the owners, (i.e. body corporate) and are the servants of the Body Corporate. Shareholders appoint the directors in the business world. In both cases these appointments are made within the concept of delegation, in other words, the functions and powers of the body corporate (i.e. the stakeholders) are carried out on a day-to-day basis by the trustees. In the business world shareholders / investors, entrust (delegate) the activity associated with maximising their investment to qualified individuals who engage in activities which add value to their investment. The major difference is that trustees are unpaid, whereas individuals who maximise profits for shareholders are well paid. Many argue, that trustees are paid indirectly, in that their diligent performance often plays a major role in the growth of property values in their scheme and that they benefit as a result! It is frightening to think that a few trustees are often responsible for the investment growth of buildings worth many millions, and that poor performing trustees are able to totally devalue a building. Clearly a body corporate must be run like a business if it is to benefit owners. Clearly owners must perform and act in unison if property values are to be maximised!

Trustees, like business directors have powers which allow them to seek

outside help to enable them to meet their performance responsibilities. Businesses seek assistance from private lawyers, retailers require the assistance of advertising agents, and wholesalers need the services of outsourced distributors and sales agents.

To page 5

HAVE YOU BACKED THE WINNING TEAM?

RE/MAX Premier International Property Group

Save **30%** on Agents Commission!!!

Specialist in Sectional Title & Clusters Assessments / Valuations are welcome!

Christine Lang
082 449 1738
(your property professional)

NOISE POLLUTION - CAPE TOWN

Anyone with a noise complaint can call the Health Department call centre number on 021 710 9469 between 8am and 4pm. Not all noise falls under City Health. Responsibilities are: public noise - SAPS or City Police; traffic noise - Traffic Department; barking dogs - civic patrol/City Police.

Can readers in other provinces provide the relative phone numbers for noise complaints in their respective areas. Please fax 021 558 6882

ALL AREAS PEST CONTROL cc

Registered at the Department of Agriculture

Mice → Cockroaches → Bedbugs → Ants
Bees → Fishmoths → Flees → Termites → etc.

012-348-0440 → 012-335-4585

BestSure FINANCIAL SERVICES

SPECIAL RATES

RAND 4 RAND
Payback Promotion!!!

Change your broker and get your first insurance premium paid back to your levy and/or body corporate account!!

(Conditions apply).

For more information speak to George at:
Tel: (011) 674 4000 or Cell: 082 965 0628
e-mail: george@bestsure.co.za

Trustees representing Bodies Corporate (owners / stakeholders) often need and appoint agents to help them meet performance responsibilities. They invariably (larger schemes) require assistance from managing agents, security companies, garden services, levy financiers, or maintenance providers. All of these specialised service providers report

to the body corporate via the trustees, and their performance is monitored by the trustees, who's performance is in turn monitored by the Body Corporate. In the business world shareholders keep a check on their Board of Directors who in turn monitor the performance of their outsourced service providers.

ORGANOGRAM OF REPORTING RESPONSIBILITY LEVELS

SECTIONAL TITLE

BUSINESS

Owners / Stakeholders

Are the central roleplayers who collectively appoint and delegate powers and functions to trustees to ensure that the complex is run efficiently.

Owners / Stakeholders

Shareholders / Investors

Are the central roleplayers who entrust their investment (money) to others (usually directors) who's powers and functions are to maximise investment growth.

Shareholders / Investors

Trustees

Act in the interest of owners/stakeholders and have the power to seek outside help.

Trustees

Directors

Act in the interest of shareholders/investors and have the power to seek outside help.

Directors

Service Providers

Managing agents,
Levy Financiers, Accountants, Garden Services, Caretakers, Maintenance, Security staff

Managing Agents

Service Providers

Lawyers, Advertising Agents, Distributors, Sales Agents

Turn the organogram upside down to see what happens when the central roleplayers abdicate responsibility or function in discord

HOW TO SAVE MONEY ON MUNICIPAL SERVICES

Sectional Title schemes are charged for waste removal based on the number of units in the block. Trustees can apply for the registration of their waste containers, which results in the scheme only paying for the actual number of registered containers being used. Often containers are shared, i.e. A block may have 24 units sharing 12 containers. Why pay for 24 when only 12 are used.



These points apply to the Cape Metropolitan Area.

Any suggestions for your area?

A group of South African tourists were being guided through an ancient castle in Europe. "This place", the guide told them, "is 600 years old. Not a stone in it has been touched, nothing altered, nothing replaced in all those years." "Wow", said one woman dryly, "they must have the same trustees that I have."

In need of advice?

PHONE OUR HELP LINE 9am - 4:30pm 086 757 7882
Unfortunately we are not able to reply to each of the hundreds of emails that we receive each month requesting written answers.

ACKNOWLEDGMENT

THIS PUBLICATION ACKNOWLEDGES THE CONTRIBUTION MADE TO THE SECTIONAL TITLE INDUSTRY BY TERTIUS MAREE, GRAHAM PADDOCK, MARINA CONSTAS AND KAREN BLEIJS WHO'S PUBLISHED WORK PROVIDES US WITH ADDITIONAL INSIGHT.

Help us to help you

Many questions asked via our help line can only be answered accurately when the caller is in possession of the sectional plan and rules (as lodged in the deeds office) plus has knowledge as to whether restrictions were placed on trustees at the A.G.M. Answers to questions regarding exclusive use areas, trustees decisions, and rules can vary and are only answered correctly when the caller is in possession of the info listed above. Failing which, answers are given on the basis of information provided.



DEBT MANAGEMENT SERVICES

For the collection of Arrear Levies

CONTACT THE SPECIALIST

Tel: (011) 472-0242 Fax: (011) 472-0252
Email: willemv@dmservices.co.za

POWER MEASUREMENT

We provide and install prepaid electricity meters nationwide

We sell electricity to Sectional Title Schemes at no extra cost

Now residents can manage their own electricity consumption

No more meter reading costs! No more administrative errors!

For more info visit the Sub Vending page on www.powermeasurement.co.za

Phone 021 556 3810 or 083 306 2418 for the best energy solutions

PEACE OF MIND FOR TRUSTEES

PROFESSIONAL NATION WIDE ELECTRICITY SUPPLY AND MANAGEMENT

IN MY OPINION *Editors Comment*

THE TRANSIENT STATUS OF TRUSTEES, MEMBERS, AND MANAGING AGENTS CAUSE HAVOC IN SOME SECTIONAL TITLE SCHEMES



A Body Corporate is ideally managed like a business. Financial records should be kept for a period of 6 years, whilst the minute book must be retained throughout

the duration of the scheme.

Lets consider the realities at ground level: Many Sectional Title Schemes provide "*upwardly mobile*" individuals with their first opportunity to buy a property. *Many owners sell their units within a few years!* - History is lost, and the established community culture is compromised. *Some members serve as trustees for a year* and provide a meaningful contribution! They move on - history is lost, and the projects that they incepted don't materialise in the manner that was originally perceived. *Some members*

face financial difficulty, and are handed over by the managing agent. Next year their circumstances change, and they are elected as a trustee. They proceed to lobby for a new managing agent or they assert their influence by instituting changes which often undermine the standing of managing agents, "*a new broom sweeps clean!*" and out goes the managing agent.

Managing agents come and go, some are relieved of a responsibility because they cannot perform, whilst others are removed under conditions wherein the legality of their termination is questionable and as a result, the books and records are not handed over in full and timeously - some valuable records are lost. In some schemes changing circumstances are so frequent and knowledge of the act is so limited that trustees call for resolutions to amend rules, whilst they don't even have a copy of the legitimate rules already lodged with the Registrar of Deeds. Sometimes they attempt to amend rules that were already amended years ago, or are amending rules already amended by previous resolutions, that were not lodged. There is no doubt that the temporary status of role players in the industry is a major concern, especially when it involves the smooth hand over of information and records. Consider maintenance contracts, situations, and agreements, and

even maintenance solutions, and experiences. I once experienced the negativity of an ex-trustee (with an axe to grind) who disliked my appointment as chairman (in a Durban scheme). A drain was blocked and I ran around opening the various manholes in an attempt to identify the blockage. The ex-trustee knew exactly where the blockage was because he had served as a trustee in charge of maintenance for several years. He smiled as I ran around like a chicken with no head - but would not part with his experience at the time of crisis. Similar circumstances can occur with electrical and plumbing installations, and many other prevailing maintenance related situations. The fact is that many schemes experience dynamic changes, and valuable knowledge and records are lost or are not easily accessible by new trustees. Lets be positive and consider possible solutions. We obviously look to the new ombudsman to try and facilitate solutions to the many circumstances that prevail. I now provide my penny's worth: *Surely* it should be mandatory that every new chairperson be handed a copy of the sectional plan, registered rules, previous financials, and the registrar of owners (*including parties having had rights to units*) plus individual ledger accounts. When a manager is appointed in the business world, he receives training, orientation and exposure to new information.

Surely old trustees should be obliged to meet with new trustees in order to hand over information.

Surely financial info should be housed in a legal place of safety just as matters concerning land issues are lodged in the Deeds Office. Perhaps the ombudsman will provide additional guidance when appointed. In my experience, Schemes

who use the services of levy finance companies usually benefit in that financial records are well preserved. None-the-less, the act is clear:

"On the application of any owner, registered mortgagee or the managing agent, the trustees must make all or any of the books of account or records available for inspection by the owner, the mortgagee or the managing agent."

On application and in terms of the Access to Information Act, financial records should be freely available to owners and trustees.



Sectional Title Works...
Until someone stops paying their levies...
Then you need us!

**WE'LL
PAY YOUR
LEVIES!**

MAKING SECTIONAL TITLE WORK

0861 003600
www.propell.co.za



• CONDITIONS APPLY



MR SPIKE
PERIMETER SECURITY

Electric fencing

Security spikes

Razor wire

Birdspike

0861 100 126
www.mrspike.com

NEW PRODUCTS

New affordable Digital Sound Level Meter can help Trustees fight noise pollution

After much research Bodies Corporate News has made contact with an agent who can import and provide Sound Level Meters for only R1,350 each. (providing there is sufficient interest to import 30 units) The meters used by municipalities cost upward of R40,000 as they have an inbuilt printer which plots the noise levels and provides graphic physical data, accumulated over time for use as evidence in a court of law.



The Extech 407732 does not have an internal printer, but it does measure sound accurately. It is a useful device for trustees and caretakers as it can resolve many disputes between reasonable members who live in close proximity. Nearly every Sectional Title Scheme has a minority of unreasonable residents (the moaners) and a group of metal music lovers (the rockers) and

disputes between both parties sometimes spill over into the domain of trustees who are helpless to act as they have no means of ascertaining which party is in breach of the laws. All they can do is to try to mediate, then if this fails, they can only phone law enforcement or the Health Directorate Department (Environmental Affairs) and hope that an Official arrives with a sophisticated sound level meter and takes a series of readings.

Now trustees can take readings in the complainants unit, then ask the alleged perpetrator to switch off his hi-fi and then take a second reading. The difference should not exceed 7 Decibels. In other words, music emanating from unit 1 should not affect unit 2 by adding more than 7 Decibels to the sound already present (ambient sound) in unit 2. Trustees can then share their findings with the disputing parties and suggest that either the moaners stop moaning, or that the rockers turn down the volume. Trustees can then leave it up to the disputing residents to take the matter further if the problem persists, but the trustees will inevitably find that the problem disappears as the warring

factions are now aware of which side could receive the fine if the authorities are called in to take readings. 7 Decibels above the ambient sound is fairly loud so clearly individuals can listen to music at a, - well let's call it an acceptable level. But on the other hand, everyone's tolerance level is different.

If you want to order a Sound Level Meter, send a fax to Bodies Corporate News. Please note that some degree of skill is required to correctly manage the process.



Trustees, watch those levies and avoid the property disasters that occurred in New Orleans

Letters received from readers



Dear Editor,
I am the acting Chairman of Lytton Close Body Corporate in Pinetown.

Our Chairman is currently overseas.

We consist of 8 (eight) units and have 4 trustees (incl. our Chairman). The August Issue is the first we have received (to our knowledge).

The magazine arrived in the nick of time for our AGM which was held on Monday, 15th Aug 2005 and helped us a great deal in sorting out some thorny matters amicably. Thanks for a great and informative publication.

Yours sincerely
Doug v.d. Merwe - Trustee, Act. Chairman
Ann Angus (Mrs.), Treasurer

Dear Editor,
Plaudits on a splendid No.9 bulletin. This is an exemplary concept. The lead article Dictatorial Chairpersons makes for a fascinating read. However, what has been overlooked is the very fact that no participants in a sectional title complex

will ever beat a path of gratitude or satisfaction to the Chair. The opposite is quite true, and it appears to be a petty failure with most humans in that they persistently harp about all, and everything.

Default levy collection can be extremely problematic as was discovered much to our chagrin. Having followed all the required steps of demand letters, summonses etcetera, we were faced with a professional delinquent debtor, who would make last minute

contributions, not the full outstanding amounts, I may add, but sufficient to postpone the progress of the legal action. This pattern was persistent for over two years, with the Body Corporate having to carry the defaulter until such time as the unit was eventually sold.

Kind regards,
Glenn Bubb
Ridgeley Court Body Corporate
Durban.

TRAINING COURSE FOR TRUSTEES

Sponsored by Propell Sectional Title Solutions

The training Programme provides delegates with skills aimed at preserving unit values in bodies corporate. The initial training programme focuses on Finance and Good Governance.

Venue: Institute of Estate Agents SA
10 Howard Studios, Sheldon Way,
Pinelands Cape Town

Final Date & Topic:

12/11/05 Good Governance

Time: 9 -11 am. Presented by: Joe Gatz (Lecturer in Finance) R100 per delegate (Bodies Corporate should cover this cost) Free for Propell clients. Refreshments Included.

Book by contacting Charlene at the Institute of Estate Agents on 021 531 3180.

ORDER YOUR OWN TRUSTEES POCKET GUIDE FOR ONLY R25

Simply post your cheque or money order (made in favour of Bodies Corporate News)

to
PO Box 45002
Claremont 7735

Name:.....
Phone Number:.....
Email Address:.....
Postal Address:.....
Code:.....

Adjusting the Levy Formula by the Body Corporate

Tertius Maree

Levies, whether normal or special, are calculated based on participation quotas of sections. The participation quota method is based on the size of sections measured from the median line of the outer walls. Although the participation quota method has its critics and can result in seemingly unfair results, it generally is considered the most satisfactory method. It is also sanctioned by law.

In certain instances the need may arise to depart from the participation quota method. An example is for instance when an owner's yard area is included as part of his or her section. Other owners may not have yards or the yards are not of a similar size. It would seem unfair to contribute on this yard area based on the participation quota method (*usually it would be an exclusive use area*) because, for example, the maintenance of such an area would be much less than a section used for residential purposes or even a garage.

Fortunately the legislature has opened up the back door in the form of section 32(2) of the Sectional Titles Act

95 of 1986. According to this section, the method of calculating levies may be changed by way of adopting a special Management Rule by way of a special resolution (75%) of the members of the Body Corporate. It is the only exception to the rule that Management Rules can only be change by way of a unanimous resolution.

However, the proviso to section 32(4) states that the written consent must be obtained from any owner 'adversely affected'. On face value this seems to negate the relaxation granted by the legislator, as to depart from the participation quota method would necessarily imply that one or more owners' levies would increase. They could argue that paying more would mean that they are 'adversely affected'.

It should not be interpreted in this narrow manner but rather the question to be asked is whether an owner is unreasonably or unfairly disadvantaged by the proposed

amendment. Therefore, if the proposal is logical, reasonable and fair it cannot be vetoed by owners simply due to the fact that their levies would increase.

This approach has been vindicated by the decision in the Natal High Court in *Algar v The Body Corporate of Thistledown*. The Judge expressed the view that 'in deciding whether a person has been adversely affected within the meaning of s 32(4), all the facts and circumstances must be taken into account and not only the fact that a particular member has had an increase in his or her levy.

It is important that owners or trustees do not attempt creating a special Management Rule without the help of a professional.

New Sectional Title Publications Demystifying Sectional Title

De "mist"ifying Sectional Title sets out to simplify difficult to understand concepts, and brings home in a practical manner, the ins and outs of living in a sectional title complex.

Knowledge is power, and never is this more apt than in a community lifestyle. This book is a must for all trustees who want to understand sectional title concepts - and it's available locally via Propell who have purchased copies for redistribution to interested parties at cost price. I.e. R251.00 plus postage. This book is written by Marina Constas of **Biccari Bollo Mariano.**

Attorneys, Notaries, Conveyances.

Tel: 027 11622 3622

or phone Craig Coetzee on 086 000 5050 to order your copy.





**Enquire now
all it takes is a call
011 403 2841**

**UNITED ELEVATORS THE LARGEST INDEPENDENT
ELEVATOR COMPANY IN SOUTHERN AFRICA.**

**WE REPAIR & SERVICE
ALL MAKES OF ELEVATORS**

Advanced technological controllers
Up to (6) six car group control
Reliable design
Advanced diagnostics
VVVF technology
Speed from 45 m/min to 105 m/min
240 kg - 2400kg
Economically priced
We specialise in
Motor room less (m.r.l.) elevators
& Panoramic elevators
We don't keep you waiting





**JAN VAN DEN BOS &
ASSOCIATES**

**Jan van den Bos (B.com) Law
Sectional Title Consultant & Arbitrator**

Tel: (011) 674-2105
Fax: (011) 472-0382
Cell:
Email: janv@st.co.za

301 The Galleria
16 Goldman St
Florida
1709

- ▶ This newsletter is intended for the chairman in your block.
- ▶ If you received it by chance please hand it over to a trustee.
- ▶ Chairmen, confirm your physical address and receive future issues. Fax 086 621 6612

BODIES CORPORATE NEWS Information index

- ▶ To provide editorial or opinion email: bcn@xsinet.co.za
- ▶ To view past issues visit our website www.bcn.co.za

- ▶ To subscribe, complete the subscription form on page 2.
- ▶ For legal advice ph 021 886 9504
- ▶ For advice phone our Help line 086 757 7882
- ▶ For subscription information ph Craig Coetzee on 086 000 5050.

Whilst every effort has been made to ensure that the information published is accurate, the authors, publishers and printers take no responsibility for any loss or damage suffered by any person as a result of the reliance upon the information contained herein.